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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION ONE

In re D.B., a Person Coming Under
the Juvenile Court Law.

B289943

(Los Angeles County
Super. Ct. No. CK94023B)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

M.J.,
Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles
County, Steff R. Padilla, Commissioner. Reversed and remanded.

Lori Siegel, under appointment by the Court of Appeal, for
Defendant and Appellant

Mary C. Wickham, County Counsel, Kristine P. Miles, Acting
Assistant County Counsel, and Kim Nemoy, Principal Deputy
County Counsel, for Plaintiff and Respondent.

M.J. (Mother) appeals from the juvenile court's order summarily denying her Welfare and Institution Code¹ section 388 petition, seeking reinstatement of juvenile court jurisdiction and the return of her son, D.B., who is subject to guardianship with his grandparents, to Mother's custody. The juvenile court summarily denied Mother's petition, finding Mother had not demonstrated sufficient changed circumstances or how modification of the court's orders would promote D.B.'s best interests. Mother argues that she made the requisite prima facie showing under section 388 to warrant a full evidentiary hearing on her petition. As we shall explain, we agree with Mother and reverse and remand for further proceedings.

FACTUAL AND PROCEDURAL HISTORY

The family, which includes D.B. (born in 2003), his older sister S.J. (born in 1998), and Mother, came to the attention of the Department of Children and Family Services (DCFS) in approximately 2003 based on reports that Mother's untreated mental health conditions, which included Schizoaffective Disorder, Post-Traumatic Stress Disorder (PTSD), and Attention Deficit Hyperactivity Disorder (ADHD) prevented Mother from providing adequate care to the children.² It was reported that the children were left alone without supervision, failed to attend school regularly, had poor hygiene and ragged clothing. Mother also

¹ All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

² In their briefs, the parties refer to the appellate record in Mother's prior appeal (case No. B286040), which was dismissed earlier this year. On our own motion, we take judicial notice of the appellate record in that appeal. (Evid. Code, § 452, subd. (d)(1).)

appeared to suffer from delusions and hallucinations, was disheveled and had a history of engaging in prostitution.³

In June 2012, after receiving a report that Mother was unable to properly supervise the children, DCFS filed a section 300 petition on behalf of then almost nine-year-old D.B. and his sister under subdivisions (b)(1) and (j) based on allegations that Mother was incapable of providing appropriate care and supervision for the children due to her mental and emotional disabilities.

On June 20, 2012, the court ordered the children detained with the maternal grandparents.⁴ Mother was allowed monitored visits.

Mother admitted to the social worker that she had ADHD and PTSD. Although she had been prescribed medication she did not take it; instead, she used herbal remedies. While the adjudication was pending, Mother visited the children two to three times per week and spent the night at the grandparents' home once per week.

In August 2012, the court declared the children dependents under section 300, subdivision (b)(1), removed them from Mother's custody, placed them with the maternal grandmother and ordered family reunification services, including parenting, individual counseling, transportation assistance, mental health counseling, a psychological assessment, and Mother was ordered to take all prescribed psychotropic medication.

As of April 2013, Mother had completed a parenting course and spent the night at the grandparents' home at least three times

³ In 2003, and in 2009, DCFS investigated neglect allegations involving the family, and in each instance concluded the allegations were unfounded or inconclusive.

⁴ S.J. had been living with the grandparents for several years.

per week. Mother also participated in therapy and was taking her medication as prescribed. By August 2013, Mother had made progress but still showed signs of mental illness—she believed people were spying on her by installing cameras in her home. Mother was also unemployed at the time and lacked stable housing.

In October 2013, the court terminated reunification efforts, finding that Mother had only partially complied with the case plan. The maternal grandparents indicated that they wished to become the children’s legal guardians, rather than adopt them. In April 2014, the court appointed the grandparents as the children’s legal guardians and terminated the dependency case.

On April 5, 2018, Mother filed a section 388 petition in the juvenile court seeking to reinstate jurisdiction, modify the court’s April 2014 order appointing the maternal grandparents as legal guardians and requesting the court allow D.B. to return home to live with Mother.

Mother attached the following documents to her petition:

- (1) A handwritten letter signed by D.B., dated April 2, 2018, indicating he wished to reside with Mother;
- (2) A certificate of completion of 12 sessions of parenting classes, dated April 2, 2013;
- (3) A letter from Mother’s therapists indicating Mother began individual therapy at the Jewish Family and Children’s Services on April 7, 2014 and participated in 26 sessions, having completed therapy on September 24, 2015, and indicating that Mother was doing well and effectively utilizing coping strategies to manage her symptoms;
- (4) Proof of employment, indicating two years of employment as a store manager;
- (5) Proof of housing—Mother’s lease agreement;

(6) A letter from a psychiatrist at the Long Beach Mental Health Center indicating that Mother was engaged in psychotherapy outside the clinic and that she has “no indications for psychotropic medications”;⁵ and

(7) A letter dated December 8, 2015 from the Social Security Administration, documenting Mother’s ADHD, PTSD, and mental health did not suffice as a disability to impair Mother’s ability to work.

The court summarily denied the section 388 petition without a hearing, indicating the petition did not make the requisite showing of changed circumstances or that the proposed modification would promote the child’s best interests.

Mother timely appealed.

DISCUSSION

Mother contends the juvenile court abused its discretion in declining to conduct an evidentiary hearing to consider her section 388 petition. We agree.

Section 388 provides for modification of prior juvenile court orders when the moving party can demonstrate new evidence or a change of circumstances and that modification of the previous order is in the child’s best interest. (*In re Aaliyah R.* (2006) 136 Cal.App.4th 437, 446; § 388, subd. (a).) “The parent seeking modification must ‘make a prima facie showing to trigger the right to proceed by way of a full hearing.’ ” (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 250; § 388, subd. (d).) The Legislature did not intend to make this showing “unduly burdensome.” (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) It provided that a prima

⁵ The date of the letter is partially obscured on the copy of the letter in the court file.

facie showing is made “[i]f it appears that the best interests of the child may be promoted by the proposed change of order.” (*In re Aljamie D.* (2000) 84 Cal.App.4th 424, 431.) To be entitled to a hearing, the petitioner “need[] only . . . show ‘probable cause’; [the petitioner is] not required to establish a probability of prevailing on [the] petition.” (*Id.* at pp. 432–433.) Finally, “[t]he petition [is] liberally construed in favor of its sufficiency.” (*In re Daijah T.* (2000) 83 Cal.App.4th 666, 672.) “Thus, if the petition presents any evidence that a hearing would promote the best interests of the [children], the court must order the hearing. [Citation.] The court may deny the application ex parte only if the petition fails to state a change of circumstance or new evidence that even might require a change of order or termination of jurisdiction.” (*In re Angel B.* (2002) 97 Cal.App.4th 454, 461, italics omitted.) We review the juvenile court’s summary denial of a section 388 petition for abuse of discretion. (*In re Angel B.*, *supra*, 97 Cal.App.4th at p. 460.)

In April 2014, when the juvenile court terminated jurisdiction and ordered legal guardianship for D.B. and his sister, the court acknowledged that Mother had partially complied with the case plan—she had completed the parenting course and maintained regular visits, including weekly overnight visits with the children in the grandparents’ home. It appears, however, that the court and DCFS remained concerned about Mother’s emotional and mental stability. Also, at the time Mother was not fully compliant with court-ordered counseling, she was unemployed, and lacked stable housing.

Four years later, the attachments to Mother’s April 2018 section 388 petition disclose that Mother’s mental health appears to have stabilized and that she had continued to maintain a positive

relationship with D.B. Mother's petition sets forth a prima facie case demonstrating new evidence exists or that circumstances have changed, and that D.B.'s best interests may be promoted by restoring him to Mother's custody. It appears that Mother has been employed for two years as a store manager, has stable housing, completed 26 sessions of individual therapy, and has developed coping mechanisms and strategies to address the symptoms of her mental health challenges. Even though Mother did not support her petition with current mental health or medical records, Mother's steady employment and stable housing is circumstantial evidence that her mental health has improved and that she has addressed the issues that caused DCFS to file the section 300 petition in the first instance. Also, indicative of the minor's best interests, D.B., who is now 15 years old, has expressed a desire to live with his Mother. A hearing on whether it is in D.B.'s best interest to return to Mother's home full time will provide an opportunity for the court to evaluate the full picture and to obtain input from the legal guardians, DCFS, minor's counsel, and perhaps the minor.

Mother has, thus, made the requisite showing to trigger a full hearing. Consequently, the juvenile court abused its discretion when it summarily denied Mother's section 388 petition.

DISPOSITION

The order denying Mother's April 5, 2018 Welfare and Institutions Code section 388 petition is reversed, and the matter is remanded for an evidentiary hearing on the petition.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

JOHNSON, J.

CURREY, J.*

* Associate Justice of the Court of Appeal, Second Appellate District, Division Four, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution